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Supreme Court of the United States.

OCTOBER TERM, 1904.

No. 138.

SUSAN A. RAMSAY, Plaintiff in Error,

vs.

THE TACOMA LAND COMPANY; and PHILADELPHIA TRUST, SAFE DEPOSIT AND INSURANCE COMPANY, and JOHN C. BULLITT, Trustees of the Estate of Charles B. Wright, Deceased, Defendants in Error.

IN ERROR TO THE SUPREME COURT OF THE STATE OF WASHINGTON.

BRIEF OF DEFENDANTS IN ERROR, ON MOTION TO DISMISS.

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IN THE

SUPREME COURT

OF THE UNITED STATES

SUSAN A. RAMSAY, *Plaintiff in Error,* vs. THE TACOMA LAND COMPANY, a Corporation; PHILADELPHIA TRUST, SAFE DEPOSIT & INSURANCE COMPANY, a Corporation, and JOHN C. BULLITT, Trustees of the Estate of Charles B. Wright, Deceased, *Defendants in Error.*	October Term, 1904 No. 138

BRIEF OF DEFENDANTS IN ERROR ON MOTION TO DISMISS.

The motion to dismiss the writ of error in this cause is based upon the ground of want of jurisdiction

of this Court to review the decision of the State Court upon the questions presented.

The writ alleges error in the decision and judgment of the Supreme Court of the State of Washington upon a right and privilege claimed under the laws of the United States, and that said decision and judgment were against the right and privilege so claimed.

The assignments of error are in substance:

1st. That the Supreme Court of the State of Washington erred in its construction of section 5 of the Act of Congress approved March 3, 1887, 24 Statutes at Large, page 557, that the land involved herein was subject to the preferred right of purchase by the defendant in error, Tacoma Land Company, under section 5 of said act.

2nd. That said Supreme Court erred in its construction of said section 5 of said act, in holding the Tacoma Land Company to be a citizen of the United States within the meaning of said section.

3rd. That said Supreme Court erred in its finding and decision upon a question of fact.

4th. That said Supreme Court erred in its construction of a statute of the State of Washington.

5th. That said Supreme Court erred generally in its decision and judgment, no particular ground of error being specified.

I.

This Court has no jurisdiction to review the decision and judgment of the State court in this cause, unless it be upon a question wherein a title, right or privilege was claimed under the constitution or laws of the United States, and the decision was against such title, right or privilege specially set up or claimed; and defendants in error submit that such a question and decision does not appear in the record in this cause.

The Supreme Court of the State, in its decision, from which this writ of error is taken, stated the precise question at issue and decided by that court, as follows:

"The only question in the case is whether or not the Land Department of the United States has properly construed section 5 of the Act of Congress approved March 3, 1887—24 U. S. Stat. at Large, p. 557—as giving to the Tacoma Land Company a preference right to purchase the land in question over the respondent, who, with knowledge of the rights of appellants, had filed on the land prior to the application of the Land Company to purchase." * * * "We are satisfied that the appellants had a preference right to purchase within a reasonable time, and that the Land Department correctly construed the law in so holding." (Record p. 58, 59.)

The State court by its decision sustained the right and title to the land claimed by the Tacoma Land

Company, defendant in error herein, under the exercise by said Company of its preferred right to purchase said land under the provisions of section 5 of said act of Congress.

The Tacoma Land Company, and its grantees, defendants in error herein, now hold title to said land under patent of the United States issued to said Company upon the due exercise of its preferred right of purchase under the provisions of section 5 of said act of Congress, and the plaintiff in error sought to have the defendants in error decreed to be trustees of the title for her and to make conveyance to her of the land; and the sole question involved and presented for the decision of the State court was whether said Land Company had such right of purchase under section 5 of said act, and the validity of its title under the patent of the United States. The only provision of the constitution or of any law of the United States which was involved, considered, or construed by the State court was section 5 of said act of March 3, 1887, and the right and title of the Tacoma Land Company based thereon; and the decision of the State court was *in support* of that right and title. This is amply shown by the writ of error, the first assignment of error, and the record in this cause. (Record, p. 64, 65.)

The decision was, therefore, in that respect, one where was drawn in question a right, title or privilege

claimed and exercised by said Land Company under a statute of the United States, and the decision was—*not against*—but *in support* of that right, title and privilege set up and claimed by said Land Company.

Where the decision of the State court was *in favor* of the title, right or privilege claimed under the federal authority, the Supreme Court has no jurisdiction to review it.

State, ex rel. Carey vs. Andriano, 138 U. S., 496.

The writ of error can be sustained only when the decision of the State court was *against* the right claimed under the constitution and laws of the United States.

Dower vs. Richards, 151 U. S., 658.

The decision of the State court did not in terms, or in effect, attempt to construe any provision of the constitution or laws of the United States relating to the right of homestead entry on public lands; it does not contain any reference to or application of any particular section or provision of the constitution or any statute of the United States relating to homestead entries, which was drawn in question or passed upon in any manner by the State court; but the record in this case and the decision of the State court primarily and solely involved the construction and application of section 5 of the act of March 3, 1887,

granting the right of purchase exercised by the Tacoma Land Company, upon which its title was acquired, and that decision was in support of and confirmed that right. (Record, p. 57-60.)

Hoyt vs. Thompson, 66 U. S., 518.
Sayward vs. Denny, 158 U. S., 180.

In the case of Israel vs. Arthur, 152 U. S., 355, this Court held that:

"It is not sufficient for the maintenance of our jurisdiction to review the judgments of State courts that a right, title, privilege or immunity under the constitution of the United States may have been claimed, but such right, title, privilege or immunity must have been denied."

Neither the writ of error, nor the assignment of errors, specify any right, title, or privilege claimed by the plaintiff in error under the act of March 3, 1887, which was decided against her by the State court. There is, therefore, no federal question presented for decision which brings this case within the jurisdiction of this Court.

It has been frequently held by this Court that in order to give this Court jurisdiction of a case on writ of error to a State court, it must appear affirmatively, not only that a federal question was presented for decision by the State court, but also that the decision

of that question was necessary to the determination of the case, and that it was actually decided adversely to the party claiming a right under the federal laws, or that the judgment as rendered could not have been given without deciding it.

Fowler vs. Lamson, 164 U. S., 261.

But even if it be considered that a federal question is presented, or was decided below, yet it is held that where the State court in rendering its judgment decides a federal question, and also decides against the plaintiff in error upon an independent ground, not involving a federal question, and broad enough to support the judgment, the writ of error will be dismissed without considering the federal question.

Bacon vs. State of Texas, 163 U. S., 207.

And when the decision of the court below was adverse to the plaintiff in error upon two or more independent grounds, one of which was not a federal question, this Court will dismiss the writ of error without considering the federal question.

Eustis vs. Bolles, 150 U. S., 361.
Rutland R. R. Co. vs. Cent. Vt. R. R. Co., 159 U. S., 630.

Murdock vs. Memphis, 20 Wall., 590.
Adams Co. vs. Burlington, &c., R. R. Co., 112 U. S., 123.
DeSaussure vs. Gaillard, 127 U. S., 216.
Marrow vs. Brinkley, 129 U. S., 178.

The writ of error brings before the Supreme Court for decision only the federal question in the case.

Ashley vs. Ryan, 153 U. S., 436.

The record also shows that the State court found, and in effect held as grounds for its decision, that plaintiff in error had not acted in good faith; that she had attempted to assert and claim a right to the land with notice and knowlege of the prior rights and claims thereto of the defendants in error; and that she was thereby estopped to deny their prior and superior right to the land, or to assert any right or claim in conflict with or adverse to the title of the defendants in error, who are purchasers of the land for value and in good faith.

The State court in its decision not only decided that the Tacoma Land Company had a preferred right to purchase the land within a reasonable time, but also found and held, as one of the grounds of its decision, that the application and purchase of the land made by said Company was made within such reason-

able time. This was a finding and decision upon a question of fact, which is conclusive and binding upon this Court, under the authorities hereinafter cited.

The case did not present for decision by the State court, and that court did not decide, any question as to whether the plaintiff in error was qualified to make a homestead entry, or whether the land involved was subject to homestead entry, or whether she had complied with the homestead laws, or make any construction or application of the homestead laws to her rights or claims to the land. But the sole question presented for decision, and decided by the State court, was the construction of section 5 of the act of March 3, 1887, giving the Tacoma Land Company a preferred right to purchase the land within a reasonable time, and whether it did apply for and purchase the land under that right within such reasonable time. The decision of that question was decisive of the whole case, and rendered unnecessary any consideration or decision as to the rights or claims of the plaintiff in error under the homestead laws, or any construction of the homestead laws. The question decided was determined *in support* of the right of purchase by the Tacoma Land Company under which the defendants in error claim title. Therefore, there was not presented for decision, or decided, by the State court any question involving any right, title or privilege *claimed*

by the plaintiff in error under any law of the United States, nor was the decision of the State court *against* any right, title or privilege so claimed, within the provisions of Sec. 709 of the Revised Statutes of the United States.

II.

The error alleged in the second assignment is subject to the same objection as above discussed, and it is insufficient in form and substance to present for decision any question within the jurisdiction of this Court.

The plaintiff in error claimed no right, title or privilege by reason of the Tacoma Land Company being a citizen within the meaning of section 5 of the act of March 3, 1887, and the decision of the State court was not against any right claimed by plaintiff in error under such citizenship; but, on the contrary, that decision construing section 5 of said act held that said company was a citizen within the meaning of the act, and sustained its right, as such citizen, to purchase the land under the provisions of the act.

That question, however, was no longer a new or open one; it had been theretofore decided and settled by the decisions of this Court.

U. S. vs. N. W. Express, Stage & Transp. Co., 164 U. S., 686.

Minn. & St. Louis Ry. Co. vs. Beckwith, 129 U. S., 28.
Charlotte R. R. Co. vs. Gibbes, 142 U. S., 391.
Shaw vs. Quincy Mining Co., 145 U. S., 444.
Smyth vs. Ames, 159 U. S., 466.
Pembina Mining Co. vs. Penn'a, 125 U. S., 181.
Santa Clara Co. vs. So. Pac. R. R. Co., 118 U. S., 396.

It had long been the settled and uniform decision of the Land Department of the United States.

Miller vs. Tacoma Land Co., 29 Land Dec., 633.
Tacoma Land Co. vs. N. P. R. R. Co., 26 Land Dec., 503.

and it is manifest that the assignment of error on this ground was for purposes of delay only.

III.

The third error assigned was in the finding and decision of the State court upon a question of fact.

It is so clearly settled by the repeated decisions of this Court as to require no argument, that it is not within the jurisdiction of this Court to review the decision of a State court upon a question of fact. The writ of error brings up matters of law only.

Dower vs. Richards, 151 U. S., 658.
Egan vs. Hart, 165 U. S., 188.
Israel vs. Arthur, 152 U. S., 355.

In any event, the matter of fact complained of, as stated in the decision of the State court, was more in the nature of a recital than of a finding or decision; and, further, it was not a matter of fact vital or material to the decision of the case.

IV.

The fourth error assigned is based upon the construction given by the State court to a statute of the State of Washington.

Upon the appeal from the trial court to the Supreme Court of the State, an objection was made by plaintiff in error to the form and sufficiency of the appeal bond filed, by a motion to dismiss the appeal on the ground that the appeal bond did not comply with the requirements of the State law. The motion to dismiss the appeal was fully argued before the State court, and was denied,—that court holding the bond sufficient and in compliance with the requirements of the law and practice of the State, and that the case had been properly brought into that court on appeal.

This Court, upon a writ of error from a State Supreme Court upon a federal question, will not in-

vestigate the correctness of the course of proceeding by which the case came into the State Supreme Court.

Boston Beer Co. vs. Massachusetts, 97 U. S., 25.

When a case is brought into the United States court, comity generally requires of that court that in matters relating to the proper construction of the constitution and laws of its own state the United States Court should follow the decision of the State court. This Court has frequently held, in harmony with that principle, that the construction of a State statute by the highest court of the State forms a rule of decision for the federal court; that this Court will conform its decisions to those of the State courts on their local laws; and as to questions involving State laws and practice, this Court will follow the rules adopted by the State court.

13 Century Digest, p. 2736.
Loeber vs. Schroeder, 149 U. S., 580.
Thorington vs. Montgomery, 147 U. S., 490.
Bacon vs. State of Texas, 163 U. S., 207.

"The construction by the courts of the State of its constitution and statutes is as a general rule binding on the federal courts. We may think that the Supreme Court of a State has misconstrued its constitution or its statutes, but we are not at liberty to

therefore set aside its judgments. That court is the final arbiter as to such questions."

Forsyth vs. City of Hammond, 166 U. S., 506.

"The construction given to a statute of a State by the highest judicial tribunal of such State is regarded as a part of the statute, and is as binding upon the courts of the United States as the text." * * * "The meaning of a State statute declared by the highest court of a State, is conclusive upon this Court."

Morley vs. Lake Shore & M. S. R. R. Co., 146 U. S., 162.
Sayward vs. Denny, 158 U. S., 180.
Miller vs. Anderson, 150 U. S., 132.

It was for the Supreme Court of the State of Washington to determine whether the requirements of the statute, as to the execution of the bond on appeal, had been complied with, and whether or not the appellant in that court had kept within the terms of the statute.

N. P R. R. Co. vs. Patterson, 154 U. S., 130.
People's National Bank vs. Marye, 191 U. S., 272.

The alleged error here assigned did not involve the *validity* of a state statute, but merely the *construc-*

tion of such statute. The jurisdiction of this Court extends only to questions involving the *validity* —not the *construction*—of a State statute, on the ground that it is contrary or repugnant to the constitution or laws of the United States. The question of the impairment of any constitutional right was not raised or presented in the State court, but is now presented here for the first time. This Court will not assume jurisdiction of a case, as one involving a federal question, where the federal question was not decided by the State court, but is first raised on writ of error in this Court.

The "equal protection of the laws" referred to in the fourth assignment of error, means the equal right to resort to the courts for the redress of wrongs and enforcement of rights, and exemption from unequal burdens and exactions of any kind.

The Railroad Tax Cases, 13 Fed. Rep., 722.
Co. of Santa Clara vs. So. Pac. R. R. Co., 18 Fed. Rep., 385.

Whenever a law operates alike upon all persons and property similarly situated, equal protection can not be said to be denied.

Walston vs. Nevin, 128 U. S., 578.

V.

The fifth assignment of error specifies no particular ground or character of error committed. It is too general, and is of no effect. Where the error assigned is not set out specifically, it will be held insufficient, and disregarded.

Denniston vs. Stewart, 18 Howard, 436.
Scholey vs. Rew, 23 Wallace, 331.

even though errors are apparent on the record,

Dietsch vs. Wiggins, 15 Wallace, 539,

and if none of the errors are properly assigned the writ of error should be dismissed.

Portland Co. vs. U. S., 15 Wallace, 1.
Rowe vs. Phelps, 152 U. S., 87.

The plaintiff in error has not assigned any error sufficient to bring this case within the jurisdiction of this Court; and this Court on review will not consider any errors except those assigned, and any errors not assigned are considered to have been waived.

Defendants in error respectfully submit that upon the record here presented, the writ of error should be dismissed.

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